ERIC J. BRANFMAN
ATTORNEY-AT-LAW

SWIDLER & BERLIN

CHARTERED

DIRECT DIAL
(202)424-7553

DOCKET FILE COPY ORIGINAL

April 25, 1997

RECEIVED
MAY 12 1997
Federal Communications Commission
Office of Secretary

VIA COURIER

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Bell Atlantic Telephone Companies' New Expanded Interconnection Tariff
(CS Docket No. 96-165)

Dear Mr. Caton:

Enclosed for filing please find an original and six (6) copies of the Joint Opposition of WorldCom, Inc., KMC Telecom, Inc., and RCN Telecom Services Inc. to Direct Case.

Please time and date stamp the additional copy of this document and return it with our courier.

If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Eric J. Branfman

Enclosure

No. of Copies rec'd 0+7

3000 K STREET, N.W. ▪ SUITE 300
WASHINGTON, D.C. 20007-5116
(202)424-7500 ▪ TELEX 701131 ▪ FACSIMILE (202)424-7643

RECEIVED

MAY 12 1997

Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
Bell Atlantic Telephone Companies'	)	CC Docket No. 96-165
New Expanded Interconnection Tariff	)	
	)	

JOINT OPPOSITION OF WORLDCOM, INC., KMC TELECOM, INC., AND RCN TELECOM SERVICES, INC. TO DIRECT CASE

Andrew D. Lipman
Eric J. Branfman
SWIDLER & BERLIN, CHTD.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Counsel for WorldCom, Inc., KMC Telecom, Inc. and RCN Telecom Services, Inc.

Dated: May 12, 1997

TABLE OF CONTENTS

SUMMARY i

INTRODUCTION 2

DISCUSSION 3

I. Bell Atlantic's Calculation of Central Office Occupancy Rates Is Flawed. 3

A. Bell Atlantic's Proposal Will Overrecover the Costs of Its Central Office Improvements. 4

B. Bell Atlantic Should Use Its Current Cost of Capital in Calculating Occupancy Rates. 6

II. The Commission Should Ensure that EDSX Costs Are Properly Allocated. 7

III. The Calculation of Overhead Loading Factors Is Unreasonable. 9

IV. The Commission Should Scrutinize Bell Atlantic's Proposed Labor Costs. 9

V. Bell Atlantic's Cost Studies Are Unsupported and Unjustified. 11

A. Numerous Cost Items and Assumptions Are Simply Unexplained. 12

B. Bell Atlantic's Arbitrary Assignment of Costs May Lead to Overrecovery. 14

VI. Bell Atlantic Has Not Justified Its Proposed Standards of Care. 15

CONCLUSION 16

SUMMARY

Bell Atlantic has not adequately responded to the Commission's requests for information, nor has it provided adequate support for the rates and terms of its collocation services.

In fact, there are major problems with Bell Atlantic's tariff. Bell Atlantic's proposed Central Office Occupancy Rates will overrecover costs for improving Bell Atlantic's central offices that are already recovered in non-recurring fees and recurring rate elements, and its analysis to determine such rates is based on out-dated information and an inflated cost of capital. Bell Atlantic has not justified its allocation of the costs of Electronic Digital Cross Connect System devices to collocators or the overhead loading factors it has calculated for collocation rates. Bell Atlantic's proposal to fully assign labor to collocators will also lead to overrecovery of common costs.

Because of these and many other flaws in Bell Atlantic's tariff and analysis, the Commission should determine that certain rates, terms, and conditions of the proposed tariff are unjust and unreasonable. Accordingly, the Commission should direct Bell Atlantic to revise its expanded interconnection tariff, order Bell Atlantic to provide supplemental cost support for its new tariff filing, and order Bell Atlantic to pay refunds pursuant to the terms of the accounting order previously imposed in this docket.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Bell Atlantic Telephone Companies'	)	CC Docket No. 96-165
New Expanded Interconnection Tariff	)	
	)	

JOINT OPPOSITION OF WORLDCOM, INC., KMC TELECOM, INC., AND RCN TELECOM SERVICES, INC. TO DIRECT CASE

WorldCom, Inc. ("WorldCom"), KMC Telecom, Inc. ("KMC"), and RCN Telecom Services, Inc. ("RCN"), by their undersigned counsel, respectfully submit this Opposition in accordance with paragraph 110 of the order issued by the Federal Communications Commission ("Commission") on March 11, 1997 in the above-captioned proceeding.[1] This Opposition is in response to the Direct Case filed by the Bell Atlantic telephone companies ("Bell Atlantic") pursuant to the Commission's Investigation Order.

---

[1] *Ameritech Operating Companies' New Expanded Interconnection Tariff, Bell Atlantic Telephone Companies' New Expanded Interconnection Tariff, Puerto Rico Telephone Company's New Expanded Interconnection Tariff*, CC Docket Nos. 96-185, 96-165, and 96-160, Order Designating Issues for Investigation (rel. March 11, 1997) ("Investigation Order"). Paragraph 110 of the Investigation Order provides that parties may file oppositions to or comments on Bell Atlantic's direct case no later than 15 days after that Direct Case is filed. Although the Direct Case was due April 24, 1997 and this opposition would have been due on May 9, 1997, Bell Atlantic filed its Direct Case one day late. Because the 15th day after the filing is a Saturday, this joint opposition is being filed today, May 12, 1997, in accordance with 47 C.F.R. § 1.4(j).

INTRODUCTION

WorldCom, a leading provider of interexchange services, recently merged with MFS Communications Company, Inc. ("MFS"). Before the merger, WorldCom was the fourth largest provider of interexchange services, offering both retail long distance services to end users and wholesale network services to carriers, while MFS Communications was the nation's leading facilities-based competitive local exchange carrier. As a result of the merger, WorldCom is uniquely positioned to bring a wide range of choices for telecommunications and information services to customers in Ameritech's service territory.

KMC is a Delaware corporation that has applied for and received certification to provide interexchange and local exchange service in a number of states. KMC intends to install fiber optic communication networks in a number of states and expects to offer a wide range of high quality digital local access and private line services to communications-intensive businesses and government end users.

RCN is an emerging company which plans to provide a diverse package of video and telephone services to end users. RCN has been at the forefront in providing telecommunications, cable, and information services in a competitive environment and seeks to become a true "one-stop" information company that provides local and long-distance telephone, video programming, and information services to all of its customers.

WorldCom, KMC, and RCN have each entered into interconnection agreements with Bell Atlantic, pursuant to which they will be purchasing unbundled loops from Bell Atlantic. Hence, they will require expanded interconnection service from Bell Atlantic.

On June 4, 1996, Bell Atlantic filed revisions its Tariff F.C.C. No. 1 to reinstate physical collocation expanded interconnection service and to modify the prices for its virtual collocation expanded interconnection service. Bell Atlantic made minor revisions to this filing on July 11, 1996. After the Commission cited numerous issues for investigation in its Investigation Order and granted an extension of time to Bell Atlantic for its response to the issues raised by the Commission, Bell Atlantic submitted its Direct Case which purports to justify both the rates and various terms of service underlying the tariff.

As discussed below, however, this Direct Case fails to resolve the many issues associated with Bell Atlantic's tariff and in fact raises additional issues.[2] For WorldCom, KMC, RCN, and other carriers like them, the ability to provide competing local exchange and full service offerings depends on their ability to successfully interconnect at reasonable rates and on nondiscriminatory terms with the facilities of the incumbent local exchange carriers. Bell Atlantic unfortunately has failed to present an expanded interconnection tariff that offers these necessary features or a Direct Case that would adequately support them.

DISCUSSION

I. Bell Atlantic's Calculation of Central Office Occupancy Rates Is Flawed.

In response to ¶¶ 49 and 50 of the Investigation Order, Bell Atlantic states that its central office occupancy rates were derived by adding a "Full Service Rental Rate," which represents the

---

[2] It should be noted that, given the limited time to review Bell Atlantic's Direct Case, the various flaws in Bell Atlantic's rates and tariff which are discussed below should not be viewed as an exhaustive list of the problems with Bell Atlantic's tariff. The failure to raise an issue in this Opposition should not be deemed a waiver of that issue, and these opposing carriers reserve the right to raise additional issues in the future at appropriate points in this proceeding.

market rental rates for standard office space, and a "Rent for Central Office Features," which constitutes the "extraordinary costs that distinguish central office space from commercial office space." Direct Case, Att. A at 11-13. For both of these factors, Bell Atlantic used published information about market rents and special construction costs of central offices as well as expert appraisers. Bell Atlantic's proposal is flawed in several significant respects.

A. Bell Atlantic's Proposal Will Overrecover the Costs of Its Central Office Improvements.

Bell Atlantic's so-called "Rent for Central Office Features" would lead to a substantial overrecovery of building enhancement costs. As reflected in the chart entitled "Central Office Collocation, Unit Price Index for Rent (Annual)" (Direct Case, Att. I), the "Rent For Central Office Features" appears to be designed to recover such things as "HVAC Filtration (85% Filtration & Humidity Control)," "Flooring," "Grounding," "Electrical Service," and "Security." But what Bell Atlantic fails to disclose in this analysis is that such costs are already recovered through other rate elements and fees applicable to collocators.

In particular, the "Rent for Central Office Features" duplicates the nonrecurring charge imposed by Bell Atlantic to ensure that space is ready to accommodate collocators. As provided in Section 19.7.6.(H) of Bell Atlantic's Tariff FCC No. 1 (at page 960.7, n.1), Bell Atlantic intends to charge all collocators a "room construction fee," which is "[b]ased on an estimated construction charge applied on a time and material basis per central office." This essentially reflects improvements to standard office space and, in fact, recovers up front much of the same costs that would be included in Bell Atlantic's newly proposed "Rent for Central Office Features." For example, in the December 10, 1996 letter from Bell Atlantic to MFS Communications (attached hereto as Exhibit A), Bell Atlantic quoted one collocator nearly $250,000 for improvements to the New Brunswick central office. As Bell Atlantic stated in that letter:

> The space available for physical collocation is located in the basement in an area not currently designed to accommodate transmission equipment. There is currently no air distribution to the space and therefore substantial charges to the ventilation and air conditioning system are required to meet collocators cooling capacity requirements.

This clearly overlaps the "HVAC Filtration (85% Filtration and Humidity Control)" that Bell Atlantic proposes to include in its "Rent for Central Office Features." There are also other examples in which Bell Atlantic has charged up front fees to collocators for such things as card readers and wiring upgrades which would be duplicated by the recovery for "Security," "Grounding," and "Electric Service" in the "Rent for Central Office Features."

Moreover, the "Rent for Central Office Features" also appears to duplicate recurring costs included in various rate elements for collocation service. As Bell Atlantic noted, "[t]he 'loaded' investment was determined by applying both land and building factors to capture the investment in land and building associated with the equipment." Direct Case, Att. A at 4 (emphasis added); see also Direct Case, Att. D., item II.B.5.e ("Full loadings for land, building and power were applied to the investment to develop these [collocator's equipment] costs."). Throughout Bell Atlantic's TRP charts for both physical and virtual collocation (Direct Case, Att. B and C), Bell Atlantic includes a line item for "Building." Such costs are included in the termination equipment, power installation, power generation, cross connection and various other collocation functions. Bell Atlantic does not describe what these costs are in any detail, but they appear to constitute some of the very same costs that Bell Atlantic proposes to include in the "Rent for Central Office Features."

In short, Bell Atlantic's various recurring and non-recurring charges for building improvements appear to duplicate each other. Its proposal to increase central occupancy rates by adding a "Rent for Central Office Features" would only compound this problem and allow Bell Atlantic to "triple-recover" the costs for improving office space in its central office space. The Commission should scrutinize these costs carefully to ensure that any such overrecovery is refunded to collocation customers and prevented in the future.[3]

B. Bell Atlantic Should Use Its Current Cost of Capital in Calculating Occupancy Rates.

A second fundamental problem with Bell Atlantic's calculations of central office occupancy rates is the out-dated cost of capital upon which Bell Atlantic bases its analysis. Bell Atlantic proposes to use a 12.90% composite cost of capital in order to determine occupancy rates because that "was Bell Atlantic's forward-looking cost of capital in 1993, when these studies were performed." Direct Case, Att. A at 13. This cost of capital, however, is not only out of date but is also 100 basis points above the cost of capital that Bell Atlantic now proposes to use in this case. Direct Case, Att. A at 5. It appears as if Bell Atlantic chose to use such out-of-date information simply to increase the occupancy rates it will charge to collocators.

---

[3] Furthermore, the Commission should also require Bell Atlantic to reduce its costs in accordance with any income tax benefits it might derive from providing collocation. Specifically, the Commission should require Bell Atlantic to account for any depreciation deductions it takes with respect to improvements to its central office property in preparing for collocation. These deductions constitute cost savings that Bell Atlantic should include in calculating the total direct costs of providing central office space. If Bell Atlantic will include income tax liability as a direct cost of offering collocation services, it must also be made to adjust its costs downward for any income tax benefits it receives as a result of the collocator's presence.

II. The Commission Should Ensure that EDSX Costs Are Properly Allocated.

Bell Atlantic states that it will no longer allow the use of Manual Digital Cross Connect Systems (manual DSX) devises, but will instead require the use of Electronic Digital Cross Connect Systems (EDSX) devices. Direct Case, Att. A at 17. The need for EDSX has been disputed in the past.

Nevertheless, to the extent that Bell Atlantic insists on the use of EDSX equipment, the Commission should ensure that the costs of EDSX are properly allocated among Bell Atlantic's collocation and other end-user customers. This is particularly important because EDSX equipment is significantly more expensive than manual DSX equipment and because Bell Atlantic will not allow interconnectors to self-provision the EDSX. See Direct Case, Att. A at 17.

From the Direct Case, it is not clear how Bell Atlantic proposes to allocate the costs of EDSX among its various customers. Bell Atlantic does state that

> each EDSX is used to provide service to multiple customers, both collocators and interconnection service customers. The EDSX is therefore an integral part of Bell Atlantic's service, like any other network equipment that serves multiple customers.

Direct Case, Att. A at 17. Moreover, in response to ¶ 72 of the investigation order, Bell Atlantic also states that "[t]here are some items (such as EDSX equipment) that can be used for end-user customers as well as collocators." Direct Case, Att. A at 21.

Nevertheless, a review of the TRP charts provided by Bell Atlantic in its Direct Case does not reveal how the EDSX costs were allocated among its customers. On some charts, it appears that a disproportionately large portion of the total investment in EDSX equipment will be assigned to collocators. For example, in the TRP chart entitled "III Physical Collocation Investment, DS1

Termination Equipment Function," the "Installed Unit Investment" for the EDSX Cross Connect (col. G) amounts to $2050.19 and the "Total Installed Unit Cap Investment" (col. O) is $447.54. This would suggest that collocators will be allocated 22% of the investment in EDSX equipment. But there is nothing in Bell Atlantic's direct case explaining the rationale for that allocation, nor does Bell Atlantic explain how it derives the factors (such as Unit Capacity and Fill Factors) that will drive such allocations.[4] Given the enormous Bell Atlantic customer base that is clearly being served through the shared EDSX equipment, it is inconceivable that the allocation to collocating competitors would exceed single digit percentages.

---

[4] With respect to fill factors for the EDSX bay and other investments, Bell Atlantic gives only oblique explanations about how they are derived. In item III.C.3 of Att. D, Bell Atlantic states that

> [t]he cost of the [extended] bay at 85% fill is already included in the DS1 EDSX cost, however the remote bay will be dedicated to the collocators and have a much lower fill. To account for the cost of the additional unused space, the difference between the 85% fill and the much lower fill of the bay was taken and applied to the total bay investment to develop that portion of the bay that will be charged to collocators.

Bell Atlantic, however, does not describe how it determined the fill for either the extended or remote bays, and it fails to explain why it used such a circuitous methodology to back-out the cost of the remote bay instead of calculating the costs directly.

Similarly, on the chart entitled "III Physical Collocation Investment, DS3 Cross-Con DS3 Cross-Connection Equipment Function" in Att. B, Bell Atlantic states that the repeater bay fill factor (10.02) was derived by multiplying the total DS3 demand (6) by the number of collocators (1.67). But Bell Atlantic does not provide support for its estimates of the total demand or number of collocators, nor does it explain how this equation is supposed to approximate the fill of the repeater bay.

The Commission should order Bell Atlantic to provide further explanation of how it intends to allocate EDSX costs among collocators and end users. Without such further explanation, there is no way of knowing whether or not Bell Atlantic has properly assigned the costs of EDSX equipment to all customers using such equipment.

III. The Calculation of Overhead Loading Factors Is Unreasonable.

In response to ¶¶ 71 and 72 of the Investigation Order, Bell Atlantic attempts to provide the calculations of the loading factors for expanded interconnection service. Direct Case, Att. A. at 19-21 and Att. J at Wkpr. 5-10. But while Bell Atlantic lays out its calculations, Bell Atlantic's various methods for calculating overhead loading factors yield extraordinarily large allocations of common costs to expanded interconnection and special access customers. The loading factors listed in the Direct Case, Att. A at 19 are as high as 2.0634, which suggest that common costs are more than 106% of the direct costs or, in other words, more than half the total costs of the service. Such unprecedented and large estimates could not possibly be related to the amount of common cost properly attributable to collocation. In short, Bell Atlantic's loading factors are unjust and unreasonable, and should be rejected by the Commission.

IV. The Commission Should Scrutinize Bell Atlantic's Proposed Labor Costs.

Bell Atlantic's cost studies were based on "fully assigned labor rates." Direct Case, Att. D. at items I.B.1, II.A.1.e, II.A.2.f, II.D.3, and III.E.4. This approach, combined with Bell Atlantic's methodology for setting its up-front space rates, would tend to overrecover labor costs from collocators. As reflected in the breakdown of the hourly rate for the "Product Manager, Collocation" (Direct Case, Att. A. at 10), however, a portion of the labor rate that Bell Atlantic will fully assign to collocators relates to common costs. Bell Atlantic admits that the "General & Administrative

Expenses" included in the labor rate are not "Directly Assigned" costs. Moreover, while Bell Atlantic treats "Other Related Costs - Certain Voucherable Expenses" as "Directly Assigned," these costs also appear to include common costs. Bell Atlantic does not explain how it arrived at the amounts of these common costs that it will be fully assigning to collocators. Without an explanation of this full assignment, there is no way of knowing whether Bell Atlantic assigned these common costs appropriately.

Bell Atlantic's charges for labor costs seem unjustified in several other respects as well. First, the breakdown of the labor rate for the Product Manager, Collocation indicates that the labor rate increased by nearly 9% from 1995 to 1996 -- from $80.84/hour to $87.36/hour -- (Direct Case, Att. A at 10), but Bell Atlantic does not even attempt to justify such a marked increase. Second, in detailing the labor hours for the cable support elements of both virtual and physical collocation, Bell Atlantic provides labor hours for three separate scenarios (Direct Case, Att. A at 7), but in describing the scenarios underlying the cost assumptions used by Bell Atlantic, Bell Atlantic only outlines two scenarios for virtual and physical collocation. Direct Case, Att. D at items II.A and III.A. It is not clear why this discrepancy exists.

In addition, some of the labor hours estimated by Bell Atlantic for various personnel seem extremely high. On the TRP chart entitled "III Physical Collocation Investment, DS1 Construction Provisioning Function" (Direct Case, Att. B), Bell Atlantic estimates that the Collocation Coordinator will spend 12 hours to design and plan a single entrance space, 15 hours to design and plan a dual entrance space and an additional 6 engineering hours for site augmentation. Under Bell Atlantic's assumption of 100 collocators, this would mean that the Collocation Coordinator is expected to spend well over 1000 hours solely on designing and planning new and augmented collocation facilities. This is an unrealistic assumption because such tasks would take more than half of the collocation coordinator's time during the year and would leave the coordinator with little time to serve any other functions.

V. Bell Atlantic's Cost Studies Are Unsupported and Unjustified.

Overall, Bell Atlantic's efforts to support the rates for collocation are inadequate. Bell Atlantic claims that it "used Total Service Long Run Incremental Costs (TSLRIC) to develop its cost studies. All costs were forward-looking and incremental." Direct Case, Att. A at 3. Contrary to this statement, however, Bell Atlantic's cost studies are not forward-looking but actually use current embedded costs and factors in many instances. As discussed above, the information relied upon by Bell Atlantic to determine its central office occupancy rates is five years old. Bell Atlantic admits, moreover, that in lieu of applying factors for inflation or productivity the cost studies will be updated every 12 to 24 months. Direct Case, Att. A at 3. While Bell Atlantic claims this approach was needed because prices, labor rates, labor hours and demand denominators would change every year or two, Bell Atlantic could have provided for truly forward-looking rates based on reasonable projections while allowing offsets to address future changes.[5] Bell Atlantic's so-called "forward-

---

[5] There is no reason why Bell Atlantic could not establish reasonable factors for productivity and inflation for its so-called "forward looking" analysis. As reflected in the Commission's May 7, 1997 press release, the Commission was able in its Price Cap Order to conduct "a careful analysis of the rate of growth of total factor productivity (TFP) for incumbent LECs subject to price caps, and the rate of change of input prices for those LECs." FCC Press Release: *Commission Reforms Its Price Cap Plan*, Report No. CC97-22, CC Docket No. 94-1 (May 7, 1997). In adopting 6.5 percent as the single X-Factor for all incumbent LECs under price cap regulation, the Commission concluded that there was substantial evidence "that all LECs should be able to achieve the productivity gains necessary to meet or exceed the newly prescribed X-Factor." Id.

looking" cost studies provide no real picture of what Bell Atlantic's rates and underlying costs will be in the future.

Moreover, as discussed below, Bell Atlantic has not adequately supported the costs, assumptions and cost assignments that Bell Atlantic seeks to include in its cost studies.

A. Numerous Cost Items and Assumptions Are Simply Unexplained.

Bell Atlantic does not provide the actual cost studies that it claims support its collocation rates. Rather, Bell Atlantic states only that "relevant information" from those cost studies are included in the TRP charts attached to its Direct Case. Direct Case, Att. A at 3 and 19. Contrary to the Commission's request in ¶ 37 of its Investigation Order, however, Bell Atlantic in no way explains how these workpapers relate to the actual cost studies. In fact, by failing to provide the actual cost studies themselves, as ordered by the Commission, Bell Atlantic offers no back-up for the costs that it seeks to include in it collocation rates.

In fact, Bell Atlantic's direct case is replete with cost items and assumptions that may have a significant impact on the rates but are unsupported and unjustified. The following are a few examples:

- Bell Atlantic's only justification for using a 10% standard default growth factor was based on current experience. Direct Case, Att. A at 5. It provided nothing to support the 10% figure, however, and Bell Atlantic's use of current experience to develop a growth factor is inconsistent with the forward-looking approach that Bell Atlantic claims to have adopted.

- Items II.A. and III.A of Att. D describe two scenarios under which cost assumptions were made, but Bell Atlantic does not explain why such scenarios are realistic or how they are weighted.

- According to item II.B.1.f of Att. D, Bell Atlantic assumed an average of 1.67 collocators per central office. Bell Atlantic, however, does not provide any back up documents to support this average, nor does it explain how it arrived at the average or how it accounts for the fact that the demand for collocation at certain central offices may be higher than at others.

- Item III.B.5.b of Att. D states that Bell Atlantic used a "new repeater vendor, since its prices were lower than the previous vendor." Bell Atlantic, however, fails to identify who those vendors are, what their prices are, and what steps it took to identify the least cost vendor available.[6]

- On the TRP charts in Attachments B and C, Bell Atlantic fails to explain how it derives the "Monthly Recurring Rate Per Unit" for each function (col. HH of the TRP charts) and why that rate differs from the "Total Monthly Recurring Direct Unit Costs" (col. GG of the TRP charts) For example, the "Monthly Recurring Rate Per Unit" for the chart entitled "Physical Collocation Price Out, DS1 Power Installation Function" is $119.86, whereas the "Total Monthly Recurring Direct Unit Costs" is only $94.16. Bell Atlantic fails to explain the reason for this 27.3% gross up.

Rather than attempt to justify its position on these and many other unsupported aspects of its cost studies, Bell Atlantic asks only that the Commission and collocators take it at its word. Bell Atlantic states only that:

> [T]he information supporting the costs and assumptions was developed based upon the experience of Bell Atlantic network operations staff, installation field personnel, product line managers and vendors, based on their direct experience with this type of equipment and Bell Atlantic's actual experience with over 100 collocation installations that Bell Atlantic has performed as of the date of the studies. The figures used came from the Bell Atlantic personnel who preformed and supervised the installations and maintenance activities for these installations.

---

[6] It is not clear why Bell Atlantic does not indicate that it intends to use the least cost vendor available for all equipment and materials used in collocation. The Commission should ensure that Bell Atlantic abide by its obligation to keep its costs down.

Direct Case, Att. A. at 18.[7] Bell Atlantic offers no documentation of this experience, affidavits of this experienced staff, or any other documentation that would corroborate the numbers that Bell Atlantic includes in its Direct Case. Whatever the experience of Bell Atlantic's staff, Bell Atlantic has failed to justify its many assumptions and cost estimates and therefore has failed to carry its burden of demonstrating that its proposed rates are just and reasonable.

B. Bell Atlantic's Arbitrary Assignment of Costs May Lead to Overrecovery.

As with the cost items and assumptions adopted by Bell Atlantic, Bell Atlantic's assignment of various costs also seem arbitrary and likely will overrecover its costs from collocators. For example, in Att. F., Bell Atlantic describes the Network Cable Rack (item 12) as being "dedicated to the collocator." This would suggest that the costs of this cable rack were assigned directly to the collocators. As reflected in the diagram of physical collocation equipment in Att. F, however, this "dedicated" network cable rack runs from the EDSX bay to the Wide Band Digital X-Connect System, and anyone that uses that EDSX equipment would also use that cable rack or, at a minimum, a large portion of it. Because Bell Atlantic uses the EDSX equipment for many end user customers as well as the collocators, as discussed above in Part II of this Opposition, the network cable rack

---

[7] Occasionally, Bell Atlantic attempts to justify portions of its rate filing by citing to previously filed documents. For example, Bell Atlantic does this with respect to the utilization factor for Short-Term DS3 and for the depreciation lives used in the cost studies. Direct Case, Att. A at 18 and 6. Bell Atlantic fails, however, to justify adequately these items. In the former case, Bell Atlantic does not state the methodology used in deriving its proposed utilization factor or provide any back-up documentation (and it in fact cites to a <u>September 1997</u> filing); in the latter case, Bell Atlantic does not provide the depreciation lives used in the cost studies or any justifications for them. In short, even when Bell Atlantic incorporates by reference documents purporting to support its cost studies, it provides no way to verify Bell Atlantic's costs and assumptions.

should not be dedicated to any one collocator or group of collocators, and the costs should be spread broadly to all customers using the EDSX.

In addition, Bell Atlantic appears to include as recurring capitalized costs the costs of installing coax cable between Bell Atlantic's and the collocator's equipment. Direct Case, Att. D. at item III.B.3. Bell Atlantic's novel proposal to charge these one-time installation costs as recurring costs is improper. Installation costs are by their nature non-recurring, and the proposal to capitalize these costs is atypical. Indeed, Bell Atlantic recognized this when it allocated cable installation as a non-recurring cost for the virtual collocation cost study. Id.

The Commission must scrutinize these and many other unexplained and equally improper assignments of cost.

VI. Bell Atlantic Has Not Justified Its Proposed Standards of Care.

The Commission was correct in questioning the validity of Section 19.3.7 of Bell Atlantic's tariff. Investigation Order at ¶ 86. While Section 19.3.7.(A) provides that Bell Atlantic will be liable for property damage caused by its own negligence and for service interruption and interference caused by its own willful misconduct, the indemnification clauses in Sections 19.3.7.(B) and 19.3.7.(C) operate to absolve Bell Atlantic of any liability (even liability to collocators) arising out of the mere use or presence of the collocator's equipment in Bell Atlantic's central office and/or Bell Atlantic's own acts or omissions related to installation, maintenance, repair, replacement, presence, use or removal of that equipment. In effect, Sections 19.3.7.(B) and 19.7.3.(C) would eliminate any reasonable assumption of liability by Bell Atlantic in Section 19.3.7.(A).

Bell Atlantic attempts to justify such provisions merely by claiming that Bell Atlantic will only perform maintenance on a collocator's equipment under the collocator's immediate direction and supervision and that the collocator should be responsible for any of that work. Direct Case, Att. A at 23. But the indemnification clauses do not seem to be limited to instances when the collocators supervise Bell Atlantic's employees. Section 19.3.7(B) covers any act or omission by Bell Atlantic "in connection with" the "presence" of the collocation; Section 19.3.7(C) similarly requires indemnification for all damages as a result of the collocator's mere presence in the central office. In any event, Bell Atlantic fails to recognize that it may act negligently or commit willful misconduct even when the work is supervised by the collocator. There is no basis for an indemnification clause that is tantamount to absolving Bell Atlantic of any liability associated with its own negligence or willful misconduct simply because work was requested by the collocator. Bell Atlantic should have ultimate responsibility for any malfeasance of its own employees, and the Commission should require Bell Atlantic to revise the indemnification clauses in Section 19.3.7.(B) and 19.3.7.(C) so that it will not be interpreted to excuse Bell Atlantic for liabilities properly assumed under Sections 19.3.7.(A).

In addition, the Commission also rightly expressed concerns about Sections 19.3.7.(B) and 19.3.7.(E) of Bell Atlantic's tariff, which provides that certain claims Bell Atlantic may have against collocators (for indemnification or for causing Bell Atlantic's central office to be in violation of Federal, state or local law), will survive the termination of service by a minimum of 18 months. In its Direct Case, Att. A 23-24, Bell Atlantic attempts to justify this survivability provision by claiming that the provision is necessary to resolve collocator liability when equipment is left in Bell Atlantic's central offices after the termination of service or when there are problems that are not manifested until after the service is terminated. Bell Atlantic, however, does not explain (as ordered by the Commission) why there is no maximum time period or why there is no similar provision stating the survivability of claims of collocators against Bell Atlantic. Bell Atlantic's bald assertion (Direct Case, Att. A at 24) that 18 months is a reasonable period does not justify this lop-sided allocation of liability, especially when Bell Atlantic is actually discriminating against interconnectors that will be competing against Bell Atlantic in the market.

CONCLUSION

For the foregoing reasons, the Commission should determine that certain rates, terms, and conditions of the proposed tariff are unjust and unreasonable. Accordingly, the Commission should direct Bell Atlantic to revise and refile its expanded interconnection tariff, order Bell Atlantic to provide supplemental cost support for its new tariff filing, and order Bell Atlantic to pay refunds pursuant to the terms of the accounting order previously imposed in this docket.

Respectfully submitted,

Andrew D. Lipman
Eric J. Branfman
SWIDLER & BERLIN, CHTD.
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Counsel for WorldCom, Inc., KMC Telecom, Inc., and RCN Telecom Services, Inc.

Dated: May 12, 1997

A

Bell Atlantic

Bell Atlantic Network Services, Inc.
Two Bell Atlantic Plaza
1320 North Court House Road
Ninth Floor
Arlington, Virginia 22201

Carrier Services

December 10, 1996

Mr. Luke Marchie
LEC Collocation Coordinator
MFS Communications Inc.
3 Wing Drive, Suite 200
Cedar Knolls, New Jersey 07927

VIA FAX

Dear Luke:

This is in response to your November 22, 1996, letter concerning the quoted cost for physical collocation construction costs associated with the New Brunswick central office (NBWKNJNB).

Construction costs at the New Brunswick central office are greater than those at the other collocation arrangements that MFS currently has with Bell Atlantic due to the nature of the available space. The space available for physical collocation is located in the basement in an area not currently designed to accommodate transmission equipment. There is currently no air distribution to the space and therefore substantial changes to the ventilation and air conditioning system are required to meet collocators cooling capacity requirements. The space is also located adjacent to a room housing the cooling system for the building. New Jersey fire code requires that any space adjacent to this type of equipment be separated by a masonry wall instead of a typical drywall partition. Additionally, because the only available collocation space is below grade, all materials associated with this construction must be hand carried into and out of the building. Removal of existing asbestos materials which, if undisturbed could have remained in place, also contributes to the total cost. The cost breakdown associated with this location is as follows:

General Contractor's fees:	$105,621.00
Mechanical Construction:	$91,319.00
Electrical Construction:	$30,300.00
Engineering Fees:	$21,431.00
TOTAL:	$248,671.00

Bell Atlantic is prepared to begin room construction upon receipt of payment in the amount of $124,335.50. Please bear in mind that MFS will be credited pro rata any charges incurred by additional collocators requesting space in the same area.

Please contact me on (703) 974-4621 if you have any questions.

Sincerely,

Bruce N Lear

Bruce Lear
Product Manager - Collocation

cc: Jeff Hoiler -- Bell Atlantic
Karen Personnelle -- Bell Atlantic

Rc'd 12-10-96

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Joint Opposition of WorldCom, Inc., KMC Telecom, Inc., and RCN Telecom Services, Inc., to Direct Case" will be served as indicated below on this the 12th day of May, 1997, on each of the persons listed below.

Joel deJesus

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 22
Washington, DC 20554
(by Hand Delivery)

ITS
2100 M Street, N.W.
Washington, DC 20037
(by Hand Delivery)

Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, DC 20554
(two copies; by Hand Delivery)

Laurence W. Katz
1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(by Hand Delivery)